

**Letter of Findings: 01-20160130
Individual Income Tax
For the Tax Year 2011**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Husband and Wife were required to file a 2011 Indiana income tax return because they were domiciled in Indiana during that year. While Taxpayers lived in Nevada, they owned a home in Indiana on which they claimed a homestead deduction in 2011. Taxpayers eventually filed to have the homestead deduction removed, but did not pay back the benefit of the deduction for 2011.

ISSUES

I. Income Tax-Residency.

Authority: IC § 6-8.1-5-1; IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-3-1-3.5; IC § 6-3-1-12; Dep't. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014); Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2011); State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988); Croop v. Walton, 157 N.E. 275 (Ind. 1927); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2011); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 3.1-1-22](#).

Taxpayers protest the imposition of Indiana individual income tax for the 2011 tax year.

STATEMENT OF FACTS

Taxpayers are Husband and Wife who did not file a 2011 Indiana income tax return. Based on the best information available to it, the Indiana Department of Revenue ("Department") determined that, for the 2011 tax year, Taxpayers received income which was subject to Indiana income tax and took the homestead exemption on their Indiana property. As such, the Department concluded that Taxpayers were Indiana residents who did not file their Indiana income tax return and pay the income tax that was due. The Department thus assessed Taxpayers income tax, interest, and penalty for tax year 2011.

Taxpayers timely protested the assessment. An administrative phone hearing was held. This Letter of Findings results. Additional facts will be provided as necessary.

I. Income Tax-Residency.

DISCUSSION

The Department determined that Taxpayers were domiciled in Indiana during tax year 2011 because they received 1099, 1098 and 5498 income tax notices listing their Indiana address as their home address. Information available to the Department also indicated that Taxpayers took the homestead deduction on their Indiana property for the tax years at issue. The Department therefore concluded that Taxpayers were domiciled in Indiana in 2011 and were subject to Indiana income tax.

Taxpayers contend they lived in Nevada for all of 2011, having moved there in 2007 after Husband semi-retired from his job. Taxpayers kept their Indiana home but purchased a new home in Nevada and took other steps to establish domicile in Nevada.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Indiana Dep't.

of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2011); Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2011). Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing . . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dep't. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, shall be entitled to deference.

Indiana imposes a tax "upon the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). IC § 6-3-2-2(a) specifically outlines what is income derived from Indiana sources and subject to Indiana income tax. For Indiana income tax purposes, the presumption is that taxpayers properly and correctly file their federal income tax returns as required pursuant to the Internal Revenue Code. Thus, to efficiently and effectively compute what is considered the taxpayer's Indiana income tax, the Indiana statute refers to the Internal Revenue Code. IC § 6-3-1-3.5(a) provides the starting point to determine the taxpayer's taxable income and to calculate what would be their Indiana income tax after applying certain additions and subtractions to that starting point.

Pursuant to IC § 6-3-1-12, a resident "includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state. . . ." In other words, a resident includes individuals who are domiciled in Indiana and/or maintain a permanent place of residence in Indiana and then spend more than 183 days in Indiana. In this case, Taxpayers were able to establish that they did not spend more than 183 days in Indiana during 2011. Therefore, in order to be considered a resident of Indiana during 2011, Taxpayers must have been domiciled in Indiana.

Domicile is defined by [45 IAC 3.1-1-22](#), which states:

For the purposes of this Act, **a person has only one domicile at a given time even though that person maintains more than one residence at that time. Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur.**

In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a home at that place. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.

The determination of a person's intent in relocating is necessarily a subjective determination. There is no one set of standards that will accurately indicate the person's intent in every relocation. **The determination must be made on the facts present in each individual case.** Relevant facts in determining whether a new domicile has been established include, but are not limited to:

- (1) Purchasing or renting residential property
- (2) Registering to vote
- (3) Seeking elective office
- (4) Filing a resident state income tax return or complying with the homestead laws of a state
- (5) Receiving public assistance
- (6) Titling and registering a motor vehicle
- (7) Preparing a new last will and testament which includes the state of domicile.

(Emphasis added).

Thus, a new domicile is not necessarily created when an individual moves to an address outside Indiana. Instead, the individual must move to the new non-Indiana address and have intent to remain at that non-Indiana address.

For example, in *Croop v. Walton*, 157 N.E. 275 (Ind. 1927), a taxpayer who was domiciled in Michigan sold his home in Michigan and moved to a new residence in Indiana where he and his wife lived for several years for the benefit of his wife's health. The taxpayer lived in the Indiana home "on account of the mental and physical condition of his wife, and continued to occupy it until such time as she could safely return to [Michigan] to live." *Id.* at 276. The court concluded that, based on the level of activity he maintained in Michigan and lack of intention to

abandon his domicile, taxpayer did not change his domicile from Michigan to Indiana. The court explained, in relevant part, that:

"If [a] taxpayer has **two residences in different states**, he is **taxable at the place which was originally his domicile, provided the opening of the other home has not involved an abandonment of the original domicile and the acquisition of a new one.**"

'[D]omicile' . . . is the place with which a person has a settled connection for legal purposes, either because his home is there or because it is assigned to him by the law, and is **usually defined as that place where a man has his true, fixed, permanent home, habitation, and principal establishment, without any present intention of removing therefrom, and to which place he has, whenever he is absent, the intention of returning.**

(Internal citations omitted) (**Emphasis added**).

In explaining the difference between "residence" and "domicile," the court in Croop stated:

'Domicile' "is a residence acquired as a final abode. To constitute it there must be (1) residence, actual or inchoate; (2) the nonexistence of any intention to make a domicile elsewhere." "The domicile of any person is, in general, the place which is in fact his permanent home, but is in some cases the place which, whether it be in fact his home or not, is determined to be his home by a rule of law."

"Residence is preserved by the act, domicile by the intention." "Domicile is not determined by residence alone, but upon a consideration of all the circumstances of the case." "While a person can have but one domicile at a time, he may have concurrently a residence in one place . . . and a domicile in another."

To effect a change of domicile, **there must be an abandonment of the first domicile** with an **intention not to return to it**, and there must be **a new domicile acquired by residence elsewhere** with an **intention of residing there permanently, or at least indefinitely.**

(Internal citations omitted) (**Emphasis added**).

In *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988) the Indiana Supreme Court considered the issue of the meaning of "domicile" in determining that Mr. Bayh met the residency requirement for the office of Governor. Mr. Bayh's domicile remained in Indiana even though he moved to different states for various reasons for many years. The court stated, in pertinent part:

Once acquired, domicile is presumed to continue because "every man has a residence somewhere, and ... he does not lose the one until he has gained one in another place." Establishing a new residence or domicile terminates the former domicile. A change of domicile requires an actual moving with an intent to go to a given place and remain there. "It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact.... **[T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile.**"

Residency requires a definite intention and "evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable." **Intent and conduct must converge to establish a new domicile.** *Id.* at 1317 - 18. (**Emphasis added**).

Taxpayers lived in Indiana until 2007 at which time they moved to Nevada. They kept their Indiana home. Upon arriving in Nevada, Taxpayers obtained Nevada driver's licenses, registered their vehicles in Nevada and registered to vote in Nevada. While they do return to Indiana occasionally to visit family, their lives are in Nevada.

Taxpayers purchased their current home in Nevada in 2010. According to the Clark County, Nevada Treasurer's office, Nevada does not offer a homestead deduction against property tax. Thus, Taxpayers are not able to claim such a deduction on their Nevada property. Taxpayers continued to take the homestead deduction on their Indiana property, and did so in 2011. In December 2015, Taxpayers requested that the homestead deduction on their Indiana property be removed going forward. Taxpayers did not pay back the benefit of the homestead for 2011.

While Taxpayer's actions have shown an intent to establish residency in Nevada, they have not shown an intent

to abandon their Indiana domicile. Taxpayers maintain a home in Indiana on which they claimed the homestead deduction in 2011. Taxpayers filed to have the homestead deduction removed in 2015, but did not pay back the benefit received prior to that time. When a taxpayer takes a homestead deduction on a home they are effectively declaring that home as their principal place of residence. Thus, Taxpayers have not displayed an intent to abandon their Indiana domicile.

Residency cases are particularly fact sensitive thus the position relayed within this document pertains only to this case and its specific set of facts.

FINDING

Taxpayers' protest is denied.

Posted: 10/26/2016 by Legislative Services Agency
An [html](#) version of this document.